



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Michael R. Davis
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-818

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34046.

The Texas Department of Public Safety (the "department") received a request for:

1. Any and all reports and supplemental reports generated as a result of a case filed by DPS, Sgt. David Eldridge, #3889 for Possession with Intent to Deliver Narcotics/Cocaine on and around February 23, 1995. Offense Location: El Vaquero Club, 1910 S. Harwood, Dallas, Texas.
2. Any and all reports and supplementals generated as a result of the above cases filed by any other DPS Agents or Personnel.

You claim that the requested information is excepted from disclosure under sections 552.103(a) and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108 excepts from disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

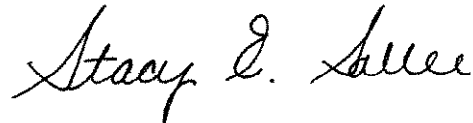
When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). You state that the cases against the suspects are pending. Therefore, we conclude that, with the exception of information that would typically appear on the first page of an offense report, the department may withhold the requested information.¹

We understand you to claim that section 552.103(a) of the Government Code should except the first-page offense report information. This office has previously addressed that contention. In Open Records Decision No. 597 (1991), this office concluded that, although 552.103(a) may except first-page offense report information in some circumstances, after the magistrate informs the suspect of the nature of the charge against him, there is no first-page information that would not have been made known to him by the magistrate. Open Records Decision No. 597 (1991) at 3. When the opposing party in the pending litigation has seen or had access to any of the information at issue, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). It appears from the submitted documents that the suspects were arrested and appeared before a magistrate who informed them of the basic details of the alleged offenses. Therefore, the department may not withhold the information typically found on the first page of an offense report. We enclose for your convenience a summary of the type of information that may not be withheld. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than its location. *See* Open Records Decision No. 127 (1976) at 5.

¹We note that one of the documents contains an affidavit supporting the issuance of an arrest and search warrant. This affidavit is public by statute. Code Crim. Proc. art. 18.01(b). If the other information contained in this document was disclosed to the suspects by the magistrate, the department may not withhold that information under either section 552.108 or 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/KHG/rho

Ref.: ID# 34046

Enclosures: Summary of Open Records Decision No. 127 (1976)
Submitted documents

cc: Mr. Mike Christopher
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(w/o enclosures)